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Attorney for Plaintiffs  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 Civ. 3312 (PAC)

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STEPHEN J. FEIN, on behalf of himself  
and all others similarly situated,

**AMENDED  
CLASS ACTION  
COMPLAINT**

Plaintiffs,

Jury trial requested

-against-

ELAINE CHAO, Secretary, United States  
Department of Labor and the UNITED  
STATES OF AMERICA,

Defendants.

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Plaintiff STEPHEN J. FEIN, by his attorney, JACOB ROLLINGS, ESQ., complaining of  
the defendants, alleges as follows:

**JURISDICTION**

1. This Court has subject matter jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 704 and 28 U.S.C. § 1331, federal question jurisdiction, for review of this action pursuant to the *Kyne* doctrine<sup>1</sup> giving it the power to review clear violations of statutory mandate. The *Kyne* doctrine allows for judicial review of an agency action when the agency exceeds its statutory authority or violates a clear statutory mandate, even if Congress precluded judicial review in the Act.

**VENUE**

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<sup>1</sup> *Leedom v. Kyne*, 358 U.S. 184, 79 S.Ct. 180 (1958)

2. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that the events or omissions that gave rise to this action occurred in the U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs, 201 Varick Street, Room 704, New York, NY 10014 in the Southern District of New York.

#### PARTIES

3. Plaintiff STEPHEN J. FEIN ("Mr. Fein") is an employee of the United States under the definitions of these terms in 5 U.S.C. §§ 5102 and 8101(1). He is a recipient of federal employees compensation under the Federal Employees Compensation Act ("FECA"), 5 U.S.C. § 8101, *et seq.* In particular, Mr. Fein was and is a civilian employee of the United States Navy who was injured on the job.

4. Defendant ELAINE CHAO is sued in her official capacity as the United States Secretary of Labor.

5. Defendant UNITED STATES OF AMERICA, through its Office of Personnel Management or other offices therein, is responsible for setting and administering the rate of pay of federal employees.

#### ADMINISTRATIVE PROCEEDINGS

6. On October 25, 2006, Mr. Fein, through this office, made an application to defendant, through Hon. Shelby Hallmark, Director, Office of Workers' Compensation Programs, United States Department of Labor, for review of his Federal Employees' Compensation award pursuant to 5 U.S.C. § 8128(a) for a locality-based comparability payment, pursuant to 5 U.S.C. § 5304, retroactive from the time he began receiving employees compensation. Specifically, Mr. Fein, as a resident of Long Island, New York is entitled to an increase due to the higher cost of living there vis-a-vis the national average.

7. On November 17, 2006, defendants, through Zev C. Sapir, District Director, Employment Standards Administration, Office of Workers' Compensation Programs in New York, NY, in the Southern District of New York, responded to Mr. Fein's letter. Mr. Sapir stated that Mr. Fein's case file was protected under the Privacy Act and that Mr. Fein must provide a signed release in order to respond to his application.

8. On December 19, 2006, Mr. Fein, again through this office, mailed to defendants' representative Mr. Sapir, a signed release.

9. On February 8, 2007, Mr. Sapir responded directly to Mr. Fein. Mr. Sapir stated that compensation recipients do not receive "locality pay" based on the state they reside like working federal employees.

#### CLASS ACTION ALLEGATIONS

10. Mr. Fein brings this action on his own behalf and behalf of all others similarly situated, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

11. The class so represented by plaintiff in this action, of which he is a member, consists of all United States federal compensation recipients, under 5 U.S.C. § 8101, et seq.

12. The exact number of members of the class, as hereinabove identified and described is not known, but the class is so numerous that joinder of individual members herein is impracticable.

13. There are common questions of law and fact in the action the relate to and affect the rights of each member of the class and relief sought is common to the entire class, viz., a declaratory judgment that plaintiffs, federal compensation recipients, as federal employees are entitled to locality based pay adjustments, pursuant to 5 U.S.C. § 5304 and § 843 of Pub.L. 109-

115 (under 5 U.S.C. § 5303) as set forth in Schedule 9 of 5 U.S.C. § 5332 (locality based areas are set forth in 5 C.F.R. § 531.603).

14. The claims of Mr. Fein, as representative of the class herein, are typical of the claims of the class, in that the claims of all members of the class, including plaintiff, depend on a showing of the acts and omissions of defendant give rise to the right of plaintiffs to the relief sought herein.

15. Mr. Fein is a representative party for the class and is able to, and will, fairly and adequately protect the interests of the class. The attorney for plaintiff is experienced and capable in litigation in the field of administrative and employment law and litigation, in general. The attorney for plaintiff will actively conduct and be responsible for plaintiffs herein.

16. This action is properly maintained as a class action insasmuch as defendants who oppose the class has acted or refused to act on grounds applicable to the class and has, by reason of such conduct, made appropriate final injunctive relief or corresponding declaratory relief with respect to the entire class, as sought in this action.

#### CAUSE OF ACTION

17. Plaintiffs, federal compensation recipients, as federal employees under the definitions set forth in 5 U.S.C. §§ 5102 and 8101(1) are entitled to locality based pay increases, pursuant to 5 U.S.C. § 5304.

18. Defendants refuse and continue to refuse to compensate plaintiffs as such.

**WHEREFORE**, plaintiff prays, for himself and all other members of the class, for the following relief: (1) a declaratory judgment that all federal compensation recipients, as federal employees, are entitled to locality-based payment adjustments and raises.; (2) that said federal compensation recipients have their pay adjusted based on their localities from the time they first

received federal compensation, together with interest; (3) payment of plaintiffs' reasonable attorney's fees and costs of this action; and (4) such other relief that this Court may deem just and equitable.

Dated: New York, NY  
September 12, 2007

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 Civ. 3312 (PAC)

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STEPHEN J. FEIN, on behalf of himself  
and all others similarly situated,

**CERTIFICATION OF SERVICE**

Plaintiffs,

-against-

ELAINE CHAO, Secretary, United States  
Department of Labor and the UNITED  
STATES OF AMERICA,

Defendants.

-----X

JACOB ROLLINGS, an attorney admitted to practice in this Court, affirms that on  
September 13, 2007, I had served the Amended Complaint upon defendants by mailing a true  
copy thereof to Lawrence H. Fogelman, Esq., Asst. U.S. Attorney, 86 Chambers Street, New  
York, NY 1007-1826 by first class mail.

Dated: Mt. Vernon, NY  
September 13, 2007

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Jacob Rollings